

Decision Maker: EXECUTIVE

FULL COUNCIL

**For Pre-Decision Scrutiny by the Environment and Community Services
PDS Committee on:**

Date: 13th November 2019

Decision Type: Non-Urgent Executive Key

Title: **TEC DELEGATION FOR THE REGULATION OF DOCKLESS
VEHICLE HIRE SCHEMES**

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Chief Officer: Colin Brand, Director of Environment and Public Protection

Ward: All Wards

Reason for report

- 1.1 To inform Members of the intention of London Councils to amend the Transport and Environment Committee (TEC) Agreement in order to pursue the proposed pan-London byelaw for the regulation of 'dockless' bicycle hire schemes.
 - 1.2 To seek approval for the delegation of powers to London Councils to make a pan-London byelaw for the regulation of 'dockless' bicycle hire schemes which Boroughs will be able to use as they deem appropriate.
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1. RECOMMENDATIONS

- 2.1 That the Environment and Community Services PDS Committee comment on the proposal of London Councils to promote and make the pan-London byelaw for dockless bicycle hire.**
- 2.2 The Executive recommends to Full Council the delegation of the above to London Councils and agrees to the proposed TEC amendment that will be required to make the proposed byelaw, authorising the Director of Environment and Public Protection to sign the delegation as required.**

Impact on Vulnerable Adults and Children

1. Summary of Impact: This proposal should enhance the Council's regulatory and enforcement powers in the sphere of Dockless bicycles, providing greater powers to keep footways unobstructed or dockless cycles parked in appropriate and safe places, helping to maintain accessibility for vulnerable pedestrians, those with mobility impairments and parents with buggies etc. .
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Corporate Policy

1. Policy Status: Supports Outcome 1 of Bromley's Third Local Implementation Plan:

This outcome is focused on encouraging healthy streets and increasing levels of active travel. The policy regarding this issue is defined as follows:

The Council will continue to observe developments in the dockless cycle hire market and work with TfL and other Boroughs to develop appropriate and proportionate powers for Local Authorities to control whether and how dockless operators can operate on the Borough's streets. Any scheme launched in the Borough will have to comply with TfL's code of practice on dockless cycles.

2. BBB Priority: Quality Environment
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Financial

1. Cost of proposal: There is no cost to the Council relating to the acceptance of the byelaw. However there may be costs incurred at a later stage depending on how Bromley intend to implement and regulate the byelaw.
 2. Ongoing cost: Ongoing running costs and potential income streams relating to the delegation for the regulation of dockless cycle hire schemes is not yet known at this early stage. Therefore it is currently not possible to quantify the financial impact of the proposal.
 3. Budget head/performance centre: N/A
 4. Total current budget for this head: N/A
 5. Source of funding: N/A
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Personnel

1. Number of staff (current and additional): 1
 2. If from existing staff resources, number of staff hours: If the Borough proceeds with using the byelaw then it is anticipated that 2 - 3 hours a week would be required for the implementation and monitoring of compliance of the byelaw.
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Legal

1. Legal Requirement: There is no legal requirement for this proposal but also currently no legal basis to control dockless bicycle hire operators.
 2. Call-in: Applicable
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Procurement

1. Summary of Procurement Implications: None at this stage
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): All residents and visitors to the Borough potentially benefit from the Council having the ability to regulate the operation of dockless cycle hire to ensure safety and minimise the impact on the highway network.
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? The issue of legislation relating to dockless bike operators was included in Bromley's LIP 3, which all ward members were invited to comment on, however no comments related to this issue were received.
2. Summary of Ward Councillors comments: N/A

3 COMMENTARY

- 3.1 Although Bromley is supportive of the option for residents to hire bicycles for trips or parts of their trips, currently there are no legal powers available to local authorities to control the operation of dockless bicycle hire operators and Central Government does not intend to introduce such legislation. At present Councils are dependent on the approach taken by each operator.
- 3.2 TfL's Borough Dockless working group of officers from across London, including Bromley, considered the most effective response to mitigating the potential negative impacts of dockless cycle hire along with realising the benefits of privately funded cycle hire and concluded that a Byelaw across London that Boroughs could opt to use was the most easily achievable and operable solution. Therefore, Transport for London and London Councils have been instructed by the London Council's Transport and Environment Committee (TEC) to develop a new regulatory approach to dockless bike sharing schemes with the intention of making a new byelaw. This byelaw is needed due to continued activity in the dockless hire market with anticipated further deployment by new operators. Whilst this report may focus on bicycles, the proposed byelaw covers dockless 'vehicles' in general, to cater for the potential introduction of e-scooters or similar products.
- 3.3 London Councils are requesting delegated authority enabling them to introduce a byelaw that would see new regulatory powers, intended to be used to compel dockless operators to use designated parking spaces, and prohibit bikes being left anywhere not agreed to by the applicable Councils.
- 3.4 The extent of dockless vehicle parking and the enforcement of the byelaw would be at the discretion of each borough.
- 3.5 Boroughs can make byelaws individually using these powers but in order for a single byelaw to be made and for it to apply uniformly across Greater London (which is what TEC members want) each London borough must delegate its authority to make the byelaws to TEC. Without the agreement of all boroughs the proposal cannot proceed.
- 3.6 The byelaw would allow the Council to regulate the market as it saw fit, this would ensure that commercially the Borough could still be seen as an attractive market for potential providers. By the same token, the byelaw would provide the Council with an element of control over operators that it does not currently possess. What the Council would not have direct control over however is the control measures undertaken by other local boroughs and how they might help or hinder the commercial viability of a dockless scheme in Bromley. Officers will endeavour to liaise with their counterparts in neighbouring boroughs to ensure they are aware of their policies and attitudes to such schemes.
- 3.7 The byelaw has been drafted and is included as an appendix. In summary the byelaw would allow the Council the following:
- 3.7.1 That all dockless bicycles/vehicles are identifiable with an individual asset number and are able to be located remotely.
- 3.7.2 That all dockless bicycles/vehicles meet the required safety and maintenance standards.
- 3.7.3 That dockless bicycles/vehicles are only 'parked' and hire terminated by the user in approved locations as defined by the Council.
- 3.7.4 The ability to serve penalty notices for any breach of the above.

4 IMPACT ON VULNERABLE ADULTS AND CHILDREN

This proposal should enhance the Council's regulatory and enforcement powers in the sphere of dockless bicycles, providing greater powers to keep footways unobstructed or dockless cycles parked in appropriate and safe places, helping to maintain accessibility for vulnerable pedestrians, those with mobility impairments and parents with buggies etc.

5 POLICY IMPLICATIONS

Bromley's third Local Implementation Plan sets out the Borough's position regarding dockless cycle as follow:

'The market for cycle hire has changed rapidly in the last year with the expansion of dockless bike operators. The Council will continue to observe developments in the dockless cycle hire market and work with TfL and other boroughs to develop appropriate and proportionate powers for local authorities to control whether and how dockless operators can operate on the Borough's streets.'

6 FINANCIAL IMPLICATIONS

There are no immediate financial implications to the Council. How the byelaw is enforced by the Council and the costs involved will be a matter for future discussion, as will the potential revenue that could be obtained through the administering of penalty notices or any financial demands related the licencing of operators or dockless parking spaces.

7 PERSONNEL IMPLICATIONS

Minimal officer time will be required to aid the introduction of byelaw.

8 LEGAL IMPLICATIONS

- 8.1 There are currently provisions in the Highways Act 1980 where, by virtue of Section 137, if a person without lawful authority or excuse in any way wilfully obstructs the free passage along a highway with a dockless bike they are guilty of an offence and liable to a fine. Further, by virtue of Section 149 Highways Act if a dockless bike is causing an obstruction of the highway and constitutes a danger (including a danger caused by obstructing the view) to users of the highway, and ought to be removed without the delay involved in giving notice or obtaining a removal and disposal order from a magistrates' court, the Council as Highway Authority may remove the dockless bike forthwith.
- 8.2 However, currently there are no specific legal powers available to local authorities to effectively regulate and control the operation of dockless bicycles and other similar hire operators, and it is understood that Central Government does not intend to introduce such legislation. Therefore local authorities will be required to make their own bylaws in this regard.
- 8.3 Under Section 235 of the Local Government Act 1972, the power to make Byelaws for Good Rule and Government and Suppression of Nuisances, relevant bylaws for the purpose of regulating dockless vehicles (and other similar class of transport device) on the highway and/or public places, can be made, which can include making it an offence for a dockless vehicle operator to cause or permit their dockless vehicle to be left on the highway or public place other than in an approved location. The matter to be regulated by the byelaw is not to be the subject of pre-existing statutory provision, or that such provision is in prospect. The confirming authority in relation to byelaws made under this section is the Secretary of State. The procedural requirements for making the bylaws as set out in Section 236 of the 1972 Act must be satisfied,

including publicity, depositing copies for inspection etc., and giving notice of intention to apply to the Secretary of State to confirm the byelaws. Unless and until confirmed, the byelaws cannot take effect.

- 8.4 It is not considered practicable for the same byelaw to be made by 33 London boroughs. The making of one byelaw across all the London boroughs is more appropriate and would require each of the 33 London local authorities participating in the TEC Joint Committee arrangement to delegate the exercise of additional functions to the Joint Committee. This requires the TEC constitution (Governing Agreement, dated 13 December 2001 (as amended)) to be varied, as local authority functions relating to the making of a pan-London byelaw for regulating dockless vehicles are not currently delegated as functions of the TEC.
- 8.5 The power to delegate the byelaw making function to London Councils is contained in section 101(5) of the 1972 Act which provides that two or more local authorities may discharge any of their functions by a joint committee. The TEC is such a joint committee which has been appointed by the 33 London local authorities. The proposed delegation would allow the TEC to make and promote a pan-London byelaw to regulate dockless vehicles on the highway and/or public places; to compel dockless operators to use designated parking spaces; and prohibit bikes being left anywhere not agreed by boroughs. The TEC has agreed that it is a suitable body to undertake both the promotion and making of such a pan-London Byelaw.
- 8.6 In principal each London Local Authority and The City of London Corporation are effectively being asked in the first instance to determine that it wishes to make such a Byelaw, and secondly that it determines the actual making of the Byelaw is delegated to the TEC so as to ensure that an appropriate pan London Byelaw can be made in accordance with the advice received by London Councils. The delegation must be mutual and London Councils would be required to formally accept this delegation.
- 8.7 Not delegating powers would impact on the ability to effectively regulate dockless cycle hire London-wide and would leave each London authority seeking to address the issues piecemeal. The proposed delegation of functions to the TEC is required to be approved by full Council as those functions include non-executive functions.
- 8.8 The proposed delegation is highly restricted; is very specific; does not mean any loss of control of the Council's assets; and it is not a transfer to the TEC of the Council's powers in respect of the parking of dockless bikes. It will, however, allow for the TEC to make, promote and establish a pan-London Byelaw. The local authorities have been assured by the TEC that the extent of dockless bike parking and the enforcement of the byelaw (including prosecution) would remain a matter for each authority's decision-making process and control, at the discretion of the Council.
- 8.9 However, for the TEC to be able to carry out the making of a pan-London Byelaw for dockless bike parking, the London Councils' TEC Agreement needs to be amended because the local authorities' byelaw making function is not currently delegated to the TEC, and the Joint Committee therefore does not currently have the authority to undertake this function on behalf of the London local authorities.
- 8.10 It has been proposed by the TEC that an appropriate amendment to Schedule 2 of the London Councils' Transport and Environment Committee Agreement, which identifies all the functions that have been delegated to it, would be by way of an addition to the Part 3(D) Functions, inserting a new paragraph 2(c) as follows: -

“(c)(i) the making of byelaws under section 235 of the Local Government Act 1972 (and, in respect of the City of London Corporation, under section 39 of the City of London (Various Powers) Act 1961) for the purpose of regulating dockless vehicles on the highway and/or public

places (including by making it an offence for a dockless vehicle operator to cause or permit their dockless vehicle to be left on the highway or public place other than in an approved location), including taking all related steps to promote, make, amend and revoke any such byelaw.

(c)(ii) The exercise of powers under Section 1 of the Localism Act 2011 for the purposes of giving effect to (i) above, including but not limited to oversight and management of the arrangements (but excluding prosecution or other enforcement).”

8.11 Amendments to Part 3(D) are made by the procedure set out in Paragraph 3(D)(1) of the TEC Agreement which provides a process for delegating the exercise of functions to the Joint Committee without requiring a separate formal variation agreement to be agreed by each authority before the delegation to the Joint Committee is effective. The procedure was adopted under an earlier formal variation to the Governing Agreement with the consent of all the London local authorities and TfL, and provides that the functions may be delegated by each London local authority to operate under the existing terms of the Governing Agreement “subject to consultation with the Participating Councils and the written agreement of each Participating Council.”

8.12 In preparation for the delegation of the bylaw function to the TEC, there is a draft Byelaw which has now been shared with borough officers, and once agreed by the local authorities it will need to be ratified by London Councils on behalf of the London Boroughs. The draft byelaw will need to be consulted upon and will need to include: -

- (i) a draft of the byelaw;
- (ii) an assessment of the regulatory burden and whether it is proportionate, informed by consultation with affected persons; and
- (iii) a statement assessing the impacts of the proposal and the proportionality of the regulatory burden.

9 PROCUREMENT IMPLICATIONS

There are no procurement issues related to the delegation.

Non-Applicable Sections:	
Background Documents: (Access via Contact Officer)	London Councils Guidance: The Greater London Dockless Vehicle Byelaw Guidance London Councils TEC Delegation dockless byelaw – Explanatory note Draft Dockless Vehicle Byelaw